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05 October 2018

Version of attached file:

Accepted Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Begon, Jessica (2015) 'What are adaptive preferences? Exclusion and disability in the capability approach.', *Journal of applied philosophy.*, 32 (3). pp. 241-257.

Further information on publisher's website:

<https://doi.org/10.1111/japp.12102>

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What are Adaptive Preferences?

Exclusion and Disability in the Capability Approach

[Draft. Final version published in *Journal of Applied Philosophy* (2015).]

Abstract: *It is a longstanding problem for theorists of justice that many victims of injustice seem to prefer mistreatment, and perpetuate their own oppression. One possible response is to simply ignore such preferences as unreliable 'adaptive preferences'. Capability theorists have taken this approach, arguing that individuals should be entitled to certain capabilities regardless of their satisfaction without them. Although this initially seems plausible, worries have been raised that undermining the reliability of individuals' strongly-held preferences impugns their rationality, and further excludes already marginalised groups. I argue that such criticisms trade on an ambiguity between two uses of the term 'adaptive preference'. An adaptive preference is often assumed to be irrational, and an unreliable guide to its possessor's best interests. However, I suggest a preference may also be adaptive in the sense that it is an unreliable guide to our distributive entitlements, and that this does not require an assessment of individuals' rationality. I consider this distinction in relation to disability, arguing that this clarification allows us to justifiably ignore some disabled individuals' preferences, in the context of theorising about distributive justice, without disrespecting or undermining their rationality or culture.*

1. Introduction

It is a longstanding problem for theorists of justice that many victims of injustice seem to perpetuate their own oppression. For example, those who choose to stay with an abusive partner, or sufferers of Stockholm syndrome (wherein a kidnap victim feels trust or affection for their captor). In conditions of great hardship or deprivation individuals may cope with their circumstances by claiming to prefer their situation to any alternative. Yet it would be highly implausible to think such preferences should legitimate these practices, or be taken as reliable evidence about these individuals' well-being: "women's compliance with sexist norms [for example] does not legitimate those norms"¹.

Unreliable adaptive preferences are particularly problematic for theories of distributive justice, where preferences may play a role in determining the goods or opportunities an

individual is entitled to. Yet the fact that a kidnap victim does not desire release should not mean they are not entitled to freedom, nor should a woman's satisfaction with fewer material resources mean they are entitled to less. This problem is starkest for preference-satisfaction welfarists for whom the unreliability of individuals' stated preferences translates directly into an unreliable theory of distributive justice. Indeed, the idea of adaptive preferences was initially developed as a critique of welfarist theories that "take...account of wants only as they are *given*"², and so assume that those who claim to be satisfied are, indeed, satisfied, and entitled to nothing further.

A possible response is to give individuals' preferences a less direct role in determining what constitutes a just distribution, and to ignore preferences such as those described as unreliable 'adaptive preferences'. Capability theorists have taken this approach, arguing that individuals should be entitled to certain capabilities regardless of their satisfaction without them. Rather than a person's preference determining their specific entitlement, we should come to an overlapping consensus on the opportunities necessary for a flourishing life, which all individuals are then entitled to (the central capabilities).³ Yet only those with *reliable* preferences should be included in this consensus, and adaptive preferences are taken to be amongst those that can be legitimately ignored. If a kidnap victim, for example, repudiates freedom, this will not be taken as evidence that we are not entitled to the capability for freedom: it will remain amongst those considered central.

In this way, capability theorists can take account of preferences, yet, unlike welfarists, can identify and ignore adaptive preferences, and so avoid ingrained mistreatment and oppression being formalised into the dictates of a theory of justice. However, whilst this response is uncontroversial in paradigmatic cases, it has been objected that undermining the reliability of individuals' strongly held preferences further excludes already marginalised groups. Characterising the preferences of oppressed and vulnerable minorities as unreliable, and those who hold them as irrational and "defective agents"⁴, may weaken the credentials of the capability approach as committed to social justice and inclusion. For example, it has been suggested that, although the approach prides itself on being robustly feminist, it unjustifiably classes the preferences of third-world women as adaptive, disregarding their autonomy and status as agents.⁵ Similarly, despite Nussbaum's claims that the approach is better placed to accommodate disability than alternative theories,⁶ Elizabeth Barnes has argued that the capability approach will exclude the preferences of many (physically) disabled people as adaptive (§2).⁷

I will argue (§3) that such criticisms trade on an ambiguity between two uses of the term ‘adaptive preferences’ in the distributive justice literature. To say a preference is adaptive *may* mean it is irrational, and a poor guide to that persons’ interests. I call these *well-being adaptive* preferences. It is for judging individuals’ preferences adaptive in *this* sense that capability theorists are criticised. However, I will argue, this is not usually what capability theorists mean when they judge a preference to be adaptive. To say a preference is adaptive, then, *may* simply mean that it is an unreliable guide to our redistributive entitlements. This need say nothing about the rationality of the individual holding the preference, and so does not necessitate insulting or paternalist judgements about someone’s incompetent or defective agency. I call these *justice adaptive* preferences.

This distinction has not been explicitly acknowledged, perhaps because from a welfarist perspective it collapses. For welfarists, our interests directly determine our entitlements. Therefore, if individuals are a reliable guide to their best interests, they are also a reliable guide to their distributive entitlements (and *vice versa*). Yet, for non-welfarist theories of distributive justice, this distinction *is* salient. I will consider its implications for capability theorists’ treatment of disabled individuals, and argue: first, that their preferences will not ordinarily be excluded (from determining our distributive entitlements) and that, despite the frequent dismissal of disabled individuals’ preferences, they should not be; and second, that individuals’ preferences can be so excluded without implying they are unreliable or irrational agents (§4). Clarifying what it means to deem a preference ‘adaptive’ allows capability theorists (and other non-welfarists) to respond to accusations that they exclude and undermine the voices of oppressed minorities, yet without allowing our distributive entitlements to be dictated by those who have adapted to mistreatment.

2. The Problem of Adaptive Preferences

There is a sense in which all our preferences are adaptive, insofar as they are informed by environmental factors such as the options we can reasonably expect to be available to us, and internal factors such as a reasonable assessment of our own abilities. The term ‘adaptive preferences’ distinguishes adaptations that undermine the reliability of our preferences from those that do not. Standard accounts of adaptive preferences – developed by Elster and his critics – model the notion on Aesop and La Fontaine’s ‘Fox and Grapes’ parable. On realising he cannot reach the grapes he desires, the fox insists

‘grapes are too sour for foxes’, and he did not want them anyway. It is assumed this response is irrational, and not a reflection of his best interests.

Standard accounts root this irrationality in procedural flaws in the process of preference formation. For example, that the preferences were formed unconsciously or necessarily unconsciously (the fox did not consciously change his preferences in light of his diminished options), or do not cohere with our other beliefs and preferences (for the fox, regarding the ideal sweetness of fruit).⁸ Such accounts aim to capture the idea that the fox’s preference is unreliable because he seems to be ‘fooling himself’: he has failed to acknowledge his limitations, or recognise that the *real* reason he no longer prefers grapes does not concern their sourness. If the fox’s response to being unable to reach the grapes were to consciously cultivate a preference for a sweeter, lower-hanging fruit, this would not be an adaptive preference.

Thus, these accounts distinguish rational, conscious, and autonomous *character planning* in light of diminished options, from irrational, unconscious, and heteronomous *adaptive preferences*. Nussbaum rejects such proceduralist accounts and argues that “[Elster] needs something he does not give us, a substantive theory of justice and central goods”.⁹ Nussbaum therefore proposes a substantive normative account, according to which adaptive preferences are those with the ‘wrong’ *content* (§2.1). Barnes argues that those who prefer their disabled life will have the ‘wrong’ preferences by Nussbaum’s standards, and will be duly excluded from the capability approach (§2.2). I accept many of Nussbaum’s criticisms of pure proceduralist approaches, and accept, too, much of Barnes’s critique of Nussbaum’s substantive account. I therefore propose a *substantive proceduralist* account of adaptive preference identification (§3).

2.1 Nussbaum’s Normative Account of Adaptive Preferences

Nussbaum argues that we should not be “suspicious of any desire that is formed through adjustment to reality”¹⁰, and that it is not whether a desire is formed unconsciously that determines whether it should be ignored: many unconscious adaptations are considered reliable. For example, adjusting our aspirations to the fact that we will never fulfil our childhood dreams to be the best opera singer, or basketball player, in the world “is often a good thing”¹¹. We do not, therefore, distrust the adult’s revised career preferences, even if the revision is unconscious.

Thus, instead of using the *process* of preference formation to identify adaptive preferences, Nussbaum focuses on their problematic *content*: “change in preferences is only problematic insofar as it leads to a preference for something which one *should not*, ceteris paribus, prefer”¹². For Nussbaum, even placing substantive conditions – such as “an absence of traditional hierarchy, absence of fear, and a sense of one’s worth and dignity”¹³ – on the process of preference formation is insufficient. Such informed-preference accounts are no more than a convenient heuristic device for Nussbaum, useful only insofar as they generate preferences for those things we ought to value.¹⁴

For example, considering educational videos produced by SEWA (Self-Employed Women’s Organisation), encouraging women to have a greater awareness of their options, Nussbaum notes:

we would not think this progress, or a correction of malformed preferences in the direction of ‘true’ preferences, if the women were taught by the videos to hide away in the house all day, or to believe that they were made for physical abuse...It is because we have an implicit theory of value that holds self-respect and economic agency to be important goods that we think the preferences constructed by the videos are good...¹⁵

Thus, it is not raising of awareness *per se* that makes the videos valuable, but the fact that they are raising awareness and moulding preferences in the *right direction*.

Capability theorists have reason to promote informed choice: it demonstrates the central capability for practical reason, which ‘suffuses’, and is essential to, the exercise of all capabilities. However, for Nussbaum, a more informed, or considered, preference is not necessarily more reliable than a habituated, and unconsidered, preference. On the contrary, if an unconsidered preference is for a good way of life (economic empowerment) and a considered preference is not (physical abuse), it is the former that is reliable. As Nussbaum puts it, “[a] habituated preference not to have an item on the list [of central functionings]...will not count in the social choice function, and the equally habituated preference to have these things will count”¹⁶.

2.2 Preferences in the Capability Approach

Barnes objects to this approach on the basis that it will identify the wrong preferences as adaptive and, in particular, will unjustifiably deem disabled individuals' preferences to be adaptive. She insists that "[p]hysical disability represents, according to the capabilities approach, an absence of one or more basic goods (bodily integrity, physical health etc...)"¹⁷. As such, Barnes suggests that "[a] disabled life, according to the capabilities approach *cannot* be as optimal as a relevantly similar non-disabled life"¹⁸. If Barnes's characterisation is right, Nussbaum must treat disabled people's preference for their life as unreliable, since to prefer the 'sub-optimal' (in response to diminished options) is to have an adaptive preference, on her view. These preferences will be deemed merely a coping mechanism, developed in response to tragic circumstances, and will be ignored.¹⁹

To appreciate the force of the criticism that disabled individuals' preferences are ignored, we must clarify the role preferences play in the capability approach. First, on most accounts, they are used to identify which capabilities should count as 'central', and so a concern of justice. Second, our preference in a particular case determines whether we exercise a capability, and perform a functioning, or not. For example, our preference will determine how much food we eat, though we should, nonetheless, have the *capability* to be fully nourished if this is as a central capability. I will not focus on this latter role since capability theorists are unlikely to use the idea of adaptive preferences to compel individuals to perform particular functionings, contrary to their preferences. Even if they insist that some functionings are central to well-being, most acknowledge that it is either counter-productive to override a preference not to perform them, or an unacceptable violation of autonomy.²⁰

It is the former role on which I will focus, then, according to which preferences have epistemic value, providing evidence of what is good for people, and so which capabilities ought to be central. Nussbaum hopes that if individuals undergo a process of reflective equilibrium, testing their considered moral judgements against their conception of what a flourishing life entails, we can reach an overlapping consensus on the functionings that are central to human life amongst a large, cross-cultural group. We should then be provided the capability to perform these functionings, which, she suggests, will include nourishment, bodily health, bodily integrity, practical reason, and emotional attachments. However, if there is intransigent disagreement on what these capabilities should be,

capability theorists face a dilemma: *either* they must remove a capability on the basis that it cannot be the object of an overlapping consensus, *or* suggest that the preferences of those who repudiate it are unreliable (perhaps adaptive), and should be excluded.²¹

This may seem a slightly unnatural use of the term ‘preferences’, since we are not concerned with how individuals want their own lives to go, but with their views on what constitutes a flourishing life. Yet if an individual *prefers* their life without a central capability, and considers it flourishing, this implies they judge this capability inessential to flourishing. Our concern, then, would not be the celibate monk who sees the value of the opportunity for sexual satisfaction, for example, but chooses to forgo it. Rather, it is with asexual individuals, who consider sexual satisfaction to be unimportant and their life without this opportunity to be flourishing.²²

Barnes’s criticism is that capability theorists will put disabled individuals in this latter category. She argues that disabled individuals lack one or more of the central capabilities, yet many flourish without them. If Barnes is right that disability must involve capability deprivation, then capability theorists will, indeed, face the dilemma of either disregarding their preference for their capability-less life as unreliably adaptive, or concluding that the capability is not essential after all. Barnes suggests capability theorists opt for the first horn of this dilemma, and exclude them.²³

Excluding the preferences of any disabled individual who considers their life flourishing on the basis that valuing their ‘sub-optimal’ life makes their preferences unreliable is, indeed, unjustified and insulting. Moreover, Nussbaum’s method of identifying adaptive preferences may seem to generate a vicious circle: the list of central capabilities is developed through discussion with those who have reliable preferences, but our preferences are only reliable if we value the central capabilities. Thus, the approach seems in danger of applying only to those who already accept it, and disabled individuals may not be amongst this group.

3. What are Adaptive Preferences?

Barnes’s critique of the capability approach, then, initially seems damaging. To determine whether it is fair, however, more needs to be said about how both adaptive preferences and disability should be properly understood. I will therefore draw a distinction between

well-being and justice adaptive preferences (§3.1), and suggest an alternative method of adaptive preference identification in the capability approach (§3.2). I will then consider disability, and argue that Barnes is wrong to suggest capability theorists will exclude all disabled individuals' preferences, and wrong, too, to suggest all such preferences should be *included* (§4).

3.1 Well-Being Adaptive or Justice Adaptive?

As §2 discussed, the paradigm example of adaptive preferences is the fabled fox and his sour grapes. The fox has been led by the inaccessibility of the grapes to the false belief that they are too sour for foxes, and so deceives himself that he does not really want them. His process of preference formation is flawed, and the resulting preference is irrational, and a poor guide to his interests. When an individual's preference is adaptive in *this* sense their well-being would improve if they (a) repudiated their current preference, and (b) achieved the object of their new preference. The fox would be better off if he preferred grapes and was able to reach them. The kidnap victim would be better off if they desired their freedom and escaped.

When individuals have such preferences – that are formed irrationally, and do not reflect their best interests – they have *well-being adaptive* preferences. However, I suggest that this is not always what theorists of distributive justice have in mind when they discuss adaptive preferences. Instead, they may mean preferences which, though rationally formed, are an unreliable guide to just distributive entitlements. Preferences may be deemed adaptive in this sense without an ascription of defective agency. These are *justice adaptive* preferences.

An example may illustrate this distinction. Sen has used the self-reported levels of health of widows and widowers in India in 1944, following the Great Bengal Famine, to argue convincingly against the welfarist reliance on preferences. Although widows actually suffered a greater rate of malnutrition and associated health problems, only 2.5% reported their health to be 'ill' or 'indifferent', as opposed to 48.5% of widowers.²⁴ Sen's point is that welfarists would prioritise healthcare for widowers on the basis of such data, ignoring the fact that women's subordinate role, particularly within the family, means they are accustomed to, and expect, much lower levels of nourishment and health, and so are satisfied with less. By giving preferences a less direct role, capability theorists can

hold that a just distribution should ensure that all individuals have certain valuable capabilities – in this case, for nourishment and bodily health – regardless of the satisfaction it produces.

That women are used to giving up their own food to ensure their husband and children are nourished should not mean their malnourishment is any less a priority than that of men who are less used to doing without. Therefore, not allowing the widows' contentment to guide distributive policy – excluding their preferences as unreliably adaptive – initially seems uncontroversial. However, we must distinguish the different senses in which their preferences may be adaptive. First, they may be well-being adaptive, such that their claim that they are satisfied with their health is a poor guide to their actual well-being: they would be better off if they preferred, and achieved, better health and nourishment. On this view, they irrationally 'fool themselves' into believing their health is not indifferent, and are unconscious of the real reasons for their preference.

Yet this may not be true in many cases. As Serene Khader points out, when the widows' circumstances are unlikely to change, their preferences may be a rational response to their deprivation, not a sign they are defective agents.²⁵ For example, prioritising their children's nourishment and preferring their own malnourishment may be a good guide to their best interests if they are more concerned for their children's well-being than their own or, more self-interestedly, if, being nourished, their children can look after them later.²⁶ Their preference for malnourishment, and satisfaction with ill-health, *may*, therefore, be rational and representative of their best interests (and so not well-being adaptive). Nonetheless, Sen's criticism remains convincing, and these preferences do not give us any reason to prioritise the healthcare of widowers (or other widows) less concerned with their children's well-being, for example. Thus, some preferences that are *rational* adaptations may be a poor guide to our distributive entitlements, and should be overlooked for the purposes of justice (justice adaptive preferences).

In summary, then, a well-being adaptive preference is a poor guide to our best interests, and is likely to be procedurally irrational. A justice adaptive preference is a poor guide to the requirements of (distributive) justice, and may be rational, and representative of our best interests (in an unjust social context). These categories are not mutually-exclusive: a preference may be both, or either, or neither. For example:

- (i) The preferences of a sufferer of Stockholm syndrome are both well-being and justice adaptive. Not only would they be better off if they preferred their freedom and escaped, they are entitled to this freedom, and their preference should not undermine their (or others') entitlement to it.
- (ii) The fox, by contrast, has preferences that are well-being, but not justice, adaptive. He would be better off if he preferred and reached his grapes, but he is not entitled to them. Therefore, these preferences are not concerns of justice.²⁷ Similarly, a deaf person's preference for a life without music (§4), or someone's preference for the music to which they have been exposed, may be well-being adaptive, insofar as they are unconscious of their reasons for this preference, and their well-being may improve if they repudiated it and experienced the alternative. Yet, again, such adaptations are not a matter of justice.
- (iii) The widows whose preference for malnourishment and ill-health is rational, and a good guide to their interests, under the (tragic) circumstances in which they find themselves, have preferences that are justice, but not well-being, adaptive. They may be a reliable guide to their interests, but they are an *unreliable* guide to their (and others') entitlement.
- (iv) Individuals who have rational and reliable preferences to be nourished, or free from captivity, have preferences that are neither well-being nor justice adaptive.

The third category is of most interest, since it covers cases where individuals' preferences should be excluded or ignored, though we do not distrust their rational agency. This allows capability theorists to avoid their list of capabilities being determined by individuals who have adapted to deprivation, without impugning the rationality of those they exclude. Hence, deeming an individual's preferences adaptive need not be as disrespectful as is often supposed. To defend this conclusion, an account of how justice adaptive preferences can be identified is needed.

3.2 Capability Deprivation and Adaptive Preference Identification

In brief, I will suggest that we have a warrant to diagnose a preference as justice adaptive if it was formed in the absence of central capabilities (to a minimum threshold). When identifying preferences that are unreliable *from the point of view of justice*, Nussbaum is right to criticise Elster for the absence of a substantive theory of justice and central goods in his account. A pure proceduralist account is insufficient to identify the preferences that

would distort a theory of justice. Yet this need not lead us to abandon proceduralism altogether, since content alone also does not determine whether we consider a preference reliable. For example, the preference for an ascetic lifestyle of someone who has chosen to enter a religious order does not seem problematically adaptive, whilst the preference of a woman in a patriarchal society for the same lack of material comforts may be. The difference lies in the process of preference formation: the former individual (I stipulate) had alternative options, was more informed, and free from external pressure.

The method of adaptive preference identification I advocate, then, is a form of substantive proceduralism. A substantive element is essential to eliminate “corrupt or mistaken” preferences.²⁸ This should at least require that preferences be appropriately informed, and this necessitates some experience of the central capabilities that individuals are asked to form preferences about. As Nussbaum notes:

When people are respected as equals, and free from intimidation, and able to learn about the world, and secure against desperate want, their judgments...are likely to be more reliable than judgments formed under the pressure of ignorance and fear and desperate need.²⁹

However, whilst Nussbaum gives a limited and ancillary justificatory role to preferences, even when appropriately informed, I suggest proceduralism should be more central to justifying capabilities.

My approach does not generate the same vicious circle as Nussbaum’s, according to which the approach only applies to those who already accept it. Whilst Nussbaum insists that individuals must *value* the central capabilities, I only argue that they must have the chance to *exercise* them, before their rejection of them can be deemed reliable. An individual’s preference is only excluded (from the overlapping consensus on the central capabilities) if they have not experienced the opportunity they reject. For example, a woman’s preference for economic disempowerment is *only* justice adaptive if she lacked the opportunity for economic empowerment when she formed this preference. In the process of arriving at an overlapping consensus, intuitions will be questioned, and those “that are initially plausible may turn out, on further investigation, to be mistaken”³⁰. However, we should not discard widely-shared intuitions about the capabilities central to a dignified human life solely on the basis of the intuitions of individuals who have never had these opportunities: we would not question the importance of the capability for economic empowerment just because women who have not experienced it do not value it.

To understand why we should be concerned about capability deprivation, we must consider what the central capabilities *are*. Capabilities are substantive opportunities to control parts of our life and, on Nussbaum's view, the capabilities that are a concern of justice are those that are central to a flourishing life. A key feature of the list of central capabilities is that it is not immutable and eternal, but contingent and changing. What constitutes a good life, or the degree to which we can reasonably expect to flourish, will vary depending on technological and social advancement. We cannot identify a single list of human capabilities and insist that justice requires that all people, at all times and places, should have these opportunities, regardless of feasibility. The content of the list – both which capabilities are included, and what it means to possess them – will be determined by the reasonable expectations of those who formulate the list.

Hence, the central capabilities five hundred years ago would differ from the current list, since our reasonable expectations concerning our bodily health, nourishment and life expectancy, have changed. My suggestion is that our preferences are not justice adaptive if we have the central capabilities, as currently defined. Thus, if 16th-century individuals possessed the 16th-century central capabilities their preferences were not justice adaptive. However, if the Indian widows Sen discussed faced a similar degree of deprivation, and had similar expectations and preferences, their preferences *were* justice adaptive (unreliable evidence for identifying 20th-century capabilities).

It may seem strange to suggest that the same absolute degree of deprivation can make preferences unreliable in one case, but not in another. Yet when we consider that these preferences are considered unreliable *as a source of information for distributive policy*, this seems less counterintuitive. A well-being adaptive preference is an unreliable guide to our best interests; a justice adaptive preference is an unreliable guide to our entitlements. Both the 16th-century individuals and the 20th-century widows may be *better off* if they preferred and achieved better health, but only the widows are *entitled* to improved health. Hence, only the widows' preferences should be disregarded in determining the distributive entitlements of their contemporaries.

The focus on capability deprivation, therefore, seems to capture our intuitions about such cases. The Indian widows were entitled to the 20th-century capability for good health, and the fact that their deprivation and mistreatment gave them a skewed understanding of

what good health constitutes should not be taken as evidence that they were not entitled to healthcare, nor of what the capability for bodily health should constitute. To diagnose an individual's preference as *justice* adaptive, suggests that they have been denied an opportunity others have agreed to be a central component of a human life, *not* that they are irrational. Thus, capability theorists can exclude preferences without being vulnerable to the criticism that they are making paternalistic (and unjustified) judgements regarding the competence of individuals to identify their best interests. To illustrate this point, I will consider how capability theorists can accommodate disabled individuals' preferences.

4. Disability and Adaptive Preferences

Barnes criticises (Nussbaum's version of) the capability approach for assuming that disabled individuals who value their disabled life have unreliable adaptive preferences. Barnes argues that only preferences formed as the result of an intrinsic influence – and usually *for* this feature or influence – are not adaptive. Intrinsic features are 'facts about who we are, in and of ourselves', such as our sex or sexuality. By contrast, we do have a warrant to distrust, and diagnose as adaptive, preferences subject to extrinsic influences. The clearest examples of extrinsic influences are "general social distortion[s]", "social wrongs or inter-personal moral badness"³¹. This, Barnes argues, explains why we judge the preferences of an abused spouse or kidnap victim to be adaptive – since they prefer something that arose from unjust, agent-caused influences – whilst our preferences for our sex or sexuality are reliable – even if being female or homosexual makes our life more difficult or 'worse'. Barnes insists disability is intrinsic: "[t]hat a person has a disability is a fact about herself, rather than a social distortion...a way a person is in and of themselves"³². Consequently, we should treat an individual's preference to be disabled as reliable, as we would their sexual preferences.

Although Barnes's focus on unjust treatment and deprivation has some intuitive appeal, I believe drawing a distinction between intrinsic and extrinsic influences is misleading. I have suggested that it is an individual's lack of central capabilities that gives us warrant to diagnose their preferences as *justice* adaptive. Whilst this often arises as a result of externally-imposed deprivation, individuals may lack capabilities as the result of intrinsic features too. I will argue, then, that disability should not be characterised as an intrinsic feature in every case (§4.1), and that it may lead to the loss of central capabilities *either* as the result of extrinsic *or* intrinsic influences. In both cases, the individuals' preferences

will be diagnosed as justice adaptive, but this diagnosis will not be appropriate in most cases (§4.2), and, even when it is, will not impugn the individuals' agency (§4.3).

4.1 Conceptualising Disability

Barnes's defence of disabled individuals' preferences depends on an understanding of disability as an intrinsic feature, which requires her to reject the social model of disability. The social model denies the necessary causal relationship between impairment – “loss of normal bodily function”³³ – and disability – “restriction in abilities to perform tasks”³⁴. It posits that it is particular social practices, attitudes, and institutions (i.e. *extrinsic influences*) that cause some impairments to be disabling. For example, deafness (impaired hearing) is a disability only because social structures are designed for the hearing.

Whilst the social model is popular amongst many in the disability rights movement, it has also been subject to a number of criticisms. Linda Barclay argues that “it is implausible to suppose that social justice for those with disability can be achieved simply by eliminating discrimination, or by fixing unacceptably biased social and institutional arrangements”³⁵. She contends that it may be impossible to design entirely unbiased social structures and that, given this, it may not be unjust to organise a society to suit the majority of its members. Barnes criticises the social model on the basis that “[i]f, for example, someone is in chronic pain, it seems that no amount of social awareness would be able to fully alleviate the ways in which they suffer from their disability”³⁶.

I would not deny the truth of either claim. It may often be difficult or impossible to modify the social structures that turn some impairments into disabilities; and some impairments may not merely be contingently disabling, but unavoidably so. Yet this should not lead us to abandon the social model entirely. I suggest that the disparate experiences of disability cannot be conceptualised as a single, uniform category, so there is no reason to think the same model will be appropriate in every case. Chronic pain may not be alleviated by social changes, but many impairments would be. I therefore propose that we distinguish disabilities that can be characterised using the social model (category 1, hereafter C1), from those that cannot (category 2, hereafter C2). The former are disabilities as the result of extrinsic, social causes, whilst the latter disabilities are intrinsic to the condition.³⁷

C1 impairments, such as deafness, blindness, mobility impairments and dwarfism, are those most discussed in the literature (including Barnes's work). These conditions may necessarily involve the loss of certain opportunities, but the same can be said of being born tone-deaf, or ugly, or clumsy. The opportunities that are *necessarily* lost are not central capabilities, and so not disabling, nor the concern of justice (§4.2). For example, dwarfism would not be a disability if average adult height was 4-feet,³⁸ and we would not consider a group of Congolese pygmies to be universally disabled.³⁹ Nor would we a largely deaf society that communicated non-verbally.

However, unlike tone-deafness, ugliness or clumsiness, capability loss *is* frequently the consequence of having C1 conditions in societies designed for the able-bodied majority: political participation, communication, mobility, bodily integrity (if subject to attack), forming emotional attachments (if stigmatised and excluded), and the ability to use imagination and reason (if improperly educated). Deaf individuals, for example, may be unable to engage in meaningful employment, receive appropriate education, or participate in society. It is these *extrinsic* consequences that are disabling, and for which individuals demand, and are entitled to, compensation. The *intrinsic* features, meanwhile, are those that many claim enrich their lives, and for which they want neither pity nor compensation. As Anderson points out:

[i]t is useful to ask what the deaf demand on their own account, in the name of justice. Do they bemoan the misery of not being able to hear, and demand compensation for this lack? On the contrary...[t]hey insist that sign language is just as valuable a form of communication as is speech and that the other goods obtainable through hearing, such as appreciation of music, are dispensable parts of any conception of good.⁴⁰

However, few claim the exclusion, stigma and isolation that disabled people routinely face is part of the positive experience of disability.⁴¹

In the absence of this contingent and extrinsically-caused capability deprivation, C1 impairments are not, in fact, disabling. Since provision of the central capabilities is the goal of distributive justice for capability theorists, a consequence of this characterisation is that C1 individuals will not be compensated for their impairment itself. Thus, if, for example, we removed all extrinsically-caused capability deprivation associated with deafness, and a 'cure' for deafness became available (cochlear implants are, perhaps, moving in this direction), individuals would not be entitled to its provision. Whilst many

in the deaf community would embrace this position, no doubt many others would object to it. The capability theorist's response may, therefore, seem implausible and callous.

However, if deafness did not involve capability loss, what would we compensate deaf individuals for? We think it a great tragedy to lose our hearing, and be unable to listen to music or hear the voices of our loved ones. Yet this is not why we provide compensation. It may seem, to many, a great tragedy to become very ugly, and many ugly people may opt for a 'cure'. However, this does not imply individuals are entitled to be beautiful (or else compensation). There is no reason, then, to think C1 impairments are particularly tragic, or necessarily involve capability loss.⁴² It is, rightly, the *contingent*, socially-caused capability deprivation for which we compensate in these cases.⁴³

However, not all impairments are merely contingently disabling. Some conditions, such as chronic pain or severe paralysis, *do* necessarily entail the loss of central capabilities, and so are intrinsically disabling. These C2 disabilities cannot be characterised by the social model, and Barnes is right that they will not be 'alleviated' by increased social awareness and revised social structures. C1 and C2 cannot always be clearly distinguished, as mobility impairments illustrate. Without aid (for example, a wheelchair), we may lack a central capability (mobility), and so consider this C2. However, once a wheelchair has been provided the case becomes C1: we possess the central capabilities absent extrinsic biases, such as public buildings not being wheelchair-accessible. Clearer cases of C2 are those when we lack the technology to provide the lost capability, and this is how I understand the category: impairments that are non-contingently *and unavoidably* disabling.

4.2 Which Preferences Can We Rely On?

I will now consider how capability theorists respond to the preferences of C1 and C2 individuals. First, I will argue that, contrary to Barnes's claims, in most instances capability theorists would not exclude disabled individuals' preferences (and rightly so). Barnes argued that since disabled individuals lack the capability for some central functionings – such as bodily integrity, physical health, mobility, or the use of their senses – to value their life is to repudiate the central capabilities.⁴⁴ On Nussbaum's account, valuing this sub-optimal life is sufficient reason to diagnose their preferences as adaptive. Accordingly, we have the vicious circle, in which individuals' preferences are not reliable

enough to determine the list of central capabilities unless they already value them. I have argued for a more proceduralist approach, according to which we must *have* (not value) the central capabilities. We must experience an opportunity widely considered essential to flourishing before our rejection of it can be considered reliable. Yet on my view, too, disabled individuals' preferences will be excluded if Barnes is right that they cannot function, since they then lack experience of central capabilities.

However, despite Barnes's claims, individuals with C1 impairments both possess and value the central capabilities, so there will be no reason to exclude them on either Nussbaum's view, or my own. Barnes's suggestion only makes sense if we adopt a very restrictive (and implausible) interpretation of capabilities. For example, Barnes suggests that blind and deaf individuals lack the capability to use their senses. However, the sensory experiences of blind and deaf people form a large part of their positive experience of their condition. Consider a first-person account that Barnes herself quotes:

My world is built of touch-sensations, devoid of physical colour and sound; but without colour and sound, it breathes and throbs with life. Every object is associated in my mind with tactual qualities which, combined in countless ways give me a sense of power, or of beauty, or of incongruity...⁴⁵

Such accounts make clear that though C1 individuals may experience the central functionings differently, they do not possess or value them any less than able-bodied people. Whilst someone who is blind and/or deaf may miss out on some forms of sensory experience, so may someone who is not. As the same account continues: "[r]emember that you, dependent on your sight, do not realise how many things are tangible"⁴⁶.

There is no reason, then, to think that the capability to "use the senses"⁴⁷ should mean using all five senses. Remember that the central capabilities are those essential to a dignified human life. The burden of proof surely lies with those who suggest that the nature of the capabilities possessed by C1 individuals (absent extrinsic influences) renders their lives undignified, and I see no reason to think this is the case. Thus, to have a C1 impairment, and prefer this life, does not involve repudiating the central capabilities. Consequently, such individuals do not have preferences for the 'wrong' thing (on Nussbaum's view), nor have they formed them under the 'wrong' circumstances (on my own). In neither case, therefore, would their preferences be considered justice adaptive, and unreliable evidence for determining the central capabilities.⁴⁸

Although preferences for intrinsic features of C1 impairments will not be excluded, this does not mean the capability approach need do nothing further to accommodate them. More explicit emphasis should, perhaps, be placed on the different ways capabilities can be exercised to ensure individuals possess them even if this requires non-standard support. For example, though deaf individuals possess the capability to use their senses, their capability for practical reason, imagination and thought may be in jeopardy if their education focuses on teaching them to lip-read and speak, at the expense of using sign language and promoting their broader education. Thus, given capability theorists' concern to represent the voices of marginalised groups, they should, perhaps, give greater prominence to the experience of C1 impairment in the *specification* of the central capabilities. However, there is nothing in this experience that suggests we must either alter the content of the list, or exclude these experiences.

C1 impairments, then, do not prevent individuals having the central capabilities, and any capability deprivation they do suffer is largely avoidable, either by removing biases, or via more direct compensation. When capability deprivation is avoided, capability theorists will not consider their preferences justice adaptive (nor provide them with further compensation). However, when individuals have *not* experienced the central capabilities, their preferences should not guide a theory of justice, as I will now consider. This may arise either as the result of an extrinsic influence on an individual with a C1 impairment, or as the intrinsic consequence of a C2 impairment.

4.3 Which Preferences Should We Distrust?

First, if C1 individuals, in circumstances that deprive them of central capabilities, insist these opportunities are inessential to flourishing, then these preferences should be excluded from the overlapping consensus. We should not allow unjust treatment to lower individuals' expectations until they are entitled to nothing more, and nor should this determine the capabilities others are entitled to. For example, if some deaf individuals adapted to the inaccessibility of meaningful work, until they preferred a life without it, and considered this opportunity inessential to a decent human life, this gives us no reason to think no one is entitled to this opportunity. Their preferences in this case are not appropriately informed, and so are justice adaptive, and should not be used to identify the central capabilities. This does not imply their preferences are irrational: it may be rational

for a deaf person to conclude that the opportunity for meaningful work is unimportant or inessential to flourishing, and pursue goals that do not require this, if they will never have this option.

Although these preferences will not inform our distributive entitlements, then, capability theorists would not judge the individuals who hold them to be defective agents, and would consider their preferences once they had been provided with opportunities that biased social structures have deprived them of. The second set of problematic cases, however, are ones in which we cannot claim that with better treatment, compensation, or altered social structures or attitudes, individuals could have the central capabilities, and so reliable (not justice adaptive) preferences. These are C2 cases, where capability deprivation is the necessary consequence of an impairment. As long as individuals claim that their life – with a C2 disability, and so without a central capability – is flourishing, we have a warrant to diagnose their preferences as justice adaptive.

Therefore, though Barnes is wrong to suggest that capability theorists exclude the C1 individuals on whom she focuses, do they nonetheless unjustifiably exclude a group's conception of the good on the basis that we judge their life sub-optimal? We should first point out that few individuals actually have the sort of preferences that concern us. Even those who adapt to, and accept, chronic pain or complete paralysis are unlikely to reject the value of the opportunity for mobility, or a life free from avoidable pain.⁴⁹ These individuals are not amongst those defending their way of life as a valuable culture, which should inform our view of what constitutes human flourishing. Thus, there is no existing minority cultural group whose preferences are ignored.

However, given such preferences are possible, how should we respond? I contend that we would be justified in saying that their experience of life is sufficiently different from the 'norm' that their testimony would not constitute a reliable guide to the capabilities appropriate for others (just as the preferences of 16th-century individuals would be an unreliable guide to modern distributive policies).⁵⁰ This is not to suggest these individuals are irrational, that their lives are worthless, or even that their preferences are an unreliable guide to their interests (well-being adaptive).⁵¹ It is simply to point out that although the capability approach is intended to be universally applicable, in those rare cases in which people have an experience of human life radically different from the norm, their preferences should not, perhaps, be allowed to veto capabilities considered central

by everyone else. If individuals were to claim that freedom from pain or mobility are inessential to flourishing because they had adapted to their experiences, should this really determine what we are owed as a matter of justice?

5. Conclusion

The distinction between justice, and well-being, adaptive preferences has significance beyond capability theorists' treatment of disability, and, indeed, beyond the capability approach itself. I contend that it is relevant to any non-welfarist theory of distributive justice, and will enable the more accurate analysis of many individuals' preferences. The specific application I have considered is illustrative of how these two sorts of adaptation come apart. Focussing on the idea of justice – as distinct from well-being – adaptation allows us to set aside some preferences in the domain of justice, without questioning individuals' rational agency or their ability to determine how their life should go. We can, therefore, conclude that *some* disabled people's preferences should not inform our distributive entitlements, but it does not disrespect their agency, or undermine their culture, to say so.

Word Count: 7470 (9169 inc. notes)

Notes

¹ S.J. Khader, 'Must Theorising about Adaptive Preferences Deny Women's Agency?', *Journal of Applied Philosophy* 29, 4 (2012): 302-317, p.302.

² J. Elster, 'Sour Grapes', in A. Sen and B. Williams (ed.) *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), p.237.

³ I am, here, following Nussbaum's account of how central capabilities can be identified (e.g. M.C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000); M.C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011)). Moreover, given the wide application of the capability approach, it is worth clarifying that I understand it as a theory of distributive justice and individual entitlement and, further, that I focus on list versions, which identify specific and universally important capabilities. I therefore focus on Nussbaum's approach, rather than Sen's, as do the critiques I consider. However, my intention is not to defend Nussbaum's account, as such, (and certainly not her account of adaptive preference identification) but a plausible version of the capability approach and adaptive preferences.

⁴ Khader op. cit., p.303.

⁵ Khader focuses her criticisms on Nussbaum (op. cit. 2000) and Okin (S.M. Okin, 'Feminism and Multiculturalism: Some Tensions', *Ethics* 108, 4 (1998): 661-684; S.M. Okin, 'Gender Inequality and Cultural Differences', *Political Theory* 22, 1 (1994): 5-24). However Okin has also criticised Nussbaum for failing to take proper account of the views of poorer women (S.M. Okin, 'Poverty, Well-Being and Gender: What Counts, Who's Heard?', *Philosophy and Public Affairs* 31, 3 (2003): 280-316), to which Nussbaum has responded (M.C. Nussbaum, 'On Hearing Women's Voices: A Reply to Susan Okin', *Philosophy & Public Affairs*

32, 2 (2004): 193-205), though unsuccessfully according to some (A. Jaggar, 'Reasoning About Well-Being: Nussbaum's Methods of Justifying the Capabilities', *Journal of Political Philosophy* 14, 3 (2006):301-322).

⁶ M.C. Nussbaum, *Frontiers of Justice*, (Cambridge, MA: Harvard University Press, 2006), pp.155-223.

⁷ E. Barnes, 'Disability and Adaptive Preference', *Philosophical Perspectives* 23 (2009a): 1-22; E. Barnes, 'Disability, Minority and Difference', *Journal of Applied Philosophy* 26, 4 (2009b): 337-355. Like Barnes, I focus on physical rather than mental disability, and subsequent references to disability should be understood as such.

⁸ These are the views of Elster (J. Elster, *Sour Grapes: Studies in the Subversion of Rationality*, (Cambridge: Cambridge University Press, 1983)), Colburn (B. Colburn, 'Autonomy and Adaptive Preferences', *Utilitas* 23, 1 (2011): 52-71), and Bovens (L. Bovens, 'Sour Grapes and Character Planning', *The Journal of Philosophy* 86, 2 (2002): 57-78) respectively.

⁹ M.C. Nussbaum, 'Symposium on Amartya Sen's philosophy: 5 Adaptive preferences and women's options', *Economics and Philosophy* 17, 1 (2001): 67-88.

¹⁰ Nussbaum op. cit. 2001, p.78.

¹¹ Nussbaum op. cit. 2001, pp.78-79.

¹² Barnes op. cit. 2009a, p.5.

¹³ Nussbaum op. cit. 2001, p.74.

¹⁴ Although Nussbaum insists that since "desire is not brutish, but an intelligent reaching-out-for-the-good, we ought to show it some respect...in the process of justification", this merely involves giving individuals' desires "a heuristic role...[and] a modest ancillary role in political justification" (Nussbaum op. cit. 2004, p.200). Whilst Nussbaum is optimistic that proceduralist, informed-desire accounts will *coincide* with her substantive approach, then, such proceduralism does no serious justificatory work. Alison Jaggar (op. cit., pp.309-320) has argued powerfully against Nussbaum's reliance on a non-Platonist substantive good approach, and suggested that proceduralism should be given a greater justificatory role. In advocating a form of a substantive proceduralism (§3.2), then, I follow Jaggar's suggestion.

¹⁵ Nussbaum op. cit. 2001, p.74.

¹⁶ Nussbaum op. cit. 2001, p.84.

¹⁷ Barnes op. cit. 2009a, p.2.

¹⁸ Barnes op. cit. 2009a, p.6.

¹⁹ This critique conflicts with Nussbaum's insistence that disabled individuals can, and so should, have "the entire range of the central human capabilities" (Nussbaum op. cit. 2006, p.169), and Barnes is uncharitable to Nussbaum insofar as she fails to consider her extensive discussions of disability. Nonetheless, Nussbaum is also clearly committed to a substantive account of autonomy, and distrustful of procedural justifications (fn.14). Since my intention is to provide a plausible reading of adaptive preferences and the capability approach, not a work of Nussbaum scholarship, I will not guess how she would resolve this tension.

²⁰ There are exceptions to this rule and, indeed, Nussbaum may be committed to forcing individuals to function on occasion, though I will not argue for this here [REFERENCE REMOVED].

²¹ Remember that for Nussbaum, though preferences play a "heuristic role" in identifying the central capabilities, "the independent moral argument must take priority". The consensus confirms, rather than independently identifies, the content of the list of central capabilities. Hence, Nussbaum tends to opt for the latter horn of this dilemma: "when the moral approach we favour seems to clash with people's desires", we can permissibly conclude that "what the majority desires here is wrong", and should not lead to the elimination of a central capability. (Nussbaum op. cit. 2004, pp.200-201)

²² See, for example, *AVEN* (The Asexual Visibility and Education Network) (www.asexuality.org); *Asexuality Archive* (www.asexualityarchive.com). I discuss the problems asexuality raises for Nussbaum's capability approach in detail elsewhere [REFERENCE REMOVED].

²³ Given that Nussbaum (op. cit. 2006, pp.16-17) distinguishes those who agree the *contents* of a theory of justice, from those to whom it *applies*, she may reply that disabled individuals can be the subjects of justice, though excluded from the overlapping consensus. In response, we might point out that: (a) we lack justification to exclude physically disabled people as appropriate 'choosers', as we would severely mentally disabled individuals, children or animals; (b) being (unjustifiably) excluded is insulting; and (c) being excluded will mean the theory is less likely to be applicable to their lives. Consequently, we have reason to think excluding physically disabled people's preferences would be a troubling conclusion for Nussbaum.

²⁴ A. Sen, *Commodities and Capabilities* (Oxford: Oxford University Press, 1999), p.53.

²⁵ Khader op. cit., p.303.

²⁶ It is somewhat controversial to suggest that an assessment of an individual's best interests should take account of others' interests, but this seems the right approach (e.g. W. Martin, *et al.*, 'An unblinkered view of best interests', *BMJ* 345:e8007 (2012). Available: <http://dx.doi.org/10.1136/bmj.e8007>).

²⁷ This is, perhaps, what Khader had in mind when arguing that feminists use the term adaptive preferences "to identify self-regarding preferences *worthy of social concern*" (Khader op. cit., p.310).

²⁸ Jagger op. cit., p.310. It is not essential to the well-being/justice adaptive preferences distinction that this particular form of substantive proceduralism be adopted.

²⁹ Nussbaum op. cit. 2000, p.152.

³⁰ Jagger op. cit., p.311.

³¹ Barnes op. cit. 2009a, p.13; Barnes op. cit. 2009b, p.345.

³² Barnes op. cit. 2009a, p.14.

³³ Nussbaum op. cit, 2006, p.423.

³⁴ L. Terzi, 'The Social Model of Disability: A Philosophical Critique', *Journal of Applied Philosophy* 21, 2 (2004): 141-157, p.142. Given my concern is distributive justice, I will understand disability as the restriction in ability to perform the *capabilities* specifically, since other inabilities are not a concern of justice (as will be discussed).

³⁵ L. Barclay, 'Disability, Respect and Justice', *Journal of Applied Philosophy* 27, 2 (2010): 154-171, p.155.

³⁶ Barnes op. cit. 2009b, p.338.

³⁷ Nussbaum *may* be sympathetic to this distinction. Although she emphasises that disabled individuals could achieve "full adult independence...if only public space could be designed to support them" (Nussbaum op. cit. 2006, pp.188-189), she also notes (in a footnote) that "we cannot prevent all disability: for some impairments will continue to affect functioning even in a just social environment" (Nussbaum op. cit. 2006, p.424). She does not develop this idea, however, or acknowledge that this constitutes two distinct treatments of disability.

³⁸ The most common cause of dwarfism, achondroplasia, often causes chronic pain too. In such cases, we may either categorise the complete condition as C2 (necessarily disabling), or distinguish the intrinsically disabling elements (chronic pain) from the contingently disabling (below average height). For simplicity, I will take dwarfism to mean just that individuals are below average height.

³⁹ E.g. C. Turnbull, *The Forest People* (New York: Touchstone, 1968).

⁴⁰ E. Anderson, 'What is the Point of Equality?', *Ethics* 109, 2 (1999): 287-337, p.333.

⁴¹ It may be argued that exclusion, stigma, and isolation do have value, insofar as the existence and value of deaf (and other disabled) culture and community is dependent on their exclusion from the hearing (or able-bodied) world. However, a theory of justice should surely not allow, or insist, that individuals be mistreated, excluded or oppressed in order to give them the chance to experience overcoming this oppression, and cultural groups can certainly flourish without a background of exclusion.

⁴² This is contrary to received wisdom in and outside analytic philosophy (e.g. J. McMahan, 'Causing Disabled People to Exist and Causing People to be Disabled', *Ethics* 116, 1 (2005): 77-99; D. Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1986), pp.351-379). The view of disability as tragic may be less widespread if we separated what it necessarily means to have a (C1) impairment, from what it happens to mean in our society.

⁴³ Given the difficulty of removing bias, we may *in practice*, always compensate C1 individuals. For example, providing cochlear implants rather than demanding everyone learn (every dialect?) of sign language.

⁴⁴ Barnes op. cit. 2009a, p.2; p.18.

⁴⁵ Keller in Barnes op. cit. 2009a, p.15.

⁴⁶ Keller in Barnes op. cit. 2009a, p.15.

⁴⁷ Nussbaum op. cit. 2011, p.33

⁴⁸ Their preference *may* be well-being adaptive, and so fall into category (ii) (see §3.1).

⁴⁹ Research into disabled individuals' preferences tends to focus on their assessment of their own well-being (e.g. H. Breivik, *et al.*, 'Survey of Chronic Pain in Europe: Prevalence, impact on daily life, and treatment', *European Journal of Pain* 10, 4 (2006); O. Gureje, *et al.*, 'Persistent Pain and Well-Being: A World Health Organisation Study in Primary Care', *The Journal of the American Medical Association* 280, 2 (1998); A. Stewart, *et al.*, 'Functional Status and Well-being of Patients with Chronic Conditions: Results from the

Medical Outcomes Study', *The Journal of the American Medical Association* 262, 7 (1989)). I am unaware of any research that considers whether this leads individuals to repudiate those capabilities they lack.

⁵⁰ It is worth emphasising that what constitutes the 'norm' is understood in a non-normative sense and, further, that what counts as normal is broadly construed: individuals with a wide-range of impairments (indeed, all C1 impairments) live a normal life on this classification.

⁵¹ A paralysed individual may consciously repudiate activities involving mobility, and come to prefer more cerebral pleasures, such that they would not be better off if they repudiated their preference for paralysis and achieved mobility.